G. R. S. 59] GPB—15,000—20-12-13

GENERAL AND REVENUE SECRETARIAT.

1901 — 02 P-24
(Prisons & Jails)

File No. 18 — 01

Serial Nos. 1 — 8

B.

~~Papers Filed.~~

Month February 02.

SUBJECT.

Appeal in the Chief Court against the decision of the city magistrate regarding the acquittal of Shaik Imam.

Indexed P. B. B. Shankha

PREVIOUS REFERENCES.	LATER REFERENCES.
P. & J. 17 — 01.	Correct

1 J255

24462 1901.
21-8-01

SECTION PV J

FILE No. 18-01

SERIAL No. 1

From Major J. Smyth On. D.J. Ins.
Offg: Insp. Genl. of Prisons
in Mysore.

To H. V. Ranjundayya Esq.
Dn. A.Dn.C.
Secy: to Government
Genl. & Revl. Depatts.

Dated 19th August 1901.

Despatched

Received

General No. 1246
No. J

Enclosure No. 2.

Requests to obtain orders of Govt. to place the case in the hands of Govt. Advocate to file an appeal in the Chief Court against the decision of the City Magte. re: the acquittal of Jail Warder Shaik Imam who was charged for the offence of negligently allowing a convict to escape.

1119

B

P+J

Submitted for
orders.
22/8/01

2

From

Major J.Smyth M.D., I.M.S.,

Offg: Inspector General of Prisons

in Mysore, Bangalore.

To

H.V.Nanjundayya Esqr: M.A.M.L.

Secretary to the Government of Mysore

General and Revenue Departments,

Bangalore.

Dated 19th August 1901.

No. 1246 Encl: 2.

Sir,

I have the honor to forward herewith in original letter No. 239 dated 9th August 1901, together with its enclosure (to be obligingly returned) from the Superintendent, Bangalore, Central Jail, and to request that you will be so good as to obtain orders of Government to place the case in the hands of the Government advocate with a view to file an appeal in the Chief Court of Mysore, against the order of the City Magistrate passed in Criminal case No.34 of 1901-1902 on the file of his Court as it is clear that the accused, the Jail Warder Shaik Imam therein concerned broke the Rule in that, he handed over part of his charge to another official outside the Jail walls without orders of the Jailor, contrary to Section 341 of the Mysore Jail Manual, which fact, although pointed out , was not considered by the

Magistrate

Magistrate in his finding.

I have the honor to be,

Sir,

Your most obedient servant,

Personal Assistant

For Offg: Inspector General of Prisons.

4

Draft sent for file

SECTION 1901

FILE No. 18-01 Read.

SERIAL No. 2

Letter no 1246 dated the 19th August 1901 from the Inspector General of Prisons in Mysore, submitting a copy of judgment in Criminal Case no 34 of 1901-1902, on the file of the City Magte, Bangalore, and requesting that for reasons assigned an appeal may be preferred in the Chief Court against the order of acquittal of the accd, Sheik Imam, passed by the City Magte in the above case.

Order thereon. Encl 15 Rgl. 2 Dft. Hon.

No. 4823-24 / 343 dt 17-9-01

P. J. O

Typed 19/9/01 LV

5

Under Section 417 of the Code of Criminal Procedure, it is directed that the Govt. Advocate ~~note~~ lodge an appeal in the High Court against the order of acquittal of the accused Sheik Imam, passed by the City Magistrate ~~in~~ of Bangalore in the ~~above~~ case ~~the said case~~.

Govt.

To, The Govt. Advocate in myore, with copy of judgment & letter no 239 of the 9th inst, from the Supdt, Central Jail.

The Supdt of Prisons returning ~~in~~ letter no 239 of 9-8-01 in original.

9/8/01

J 548

OFFICE OF THE
GOVERNMENT ADVOCATE IN MYSORE.

SECTION 107 DATED 9th October 1901.

No. 52
En. No.

FILE No. 18-0'

From [illegible] No. 3

THE GOVERNMENT ADVOCATE
IN MYSORE.

To

THE SECRETARY TO THE GOVERNMENT OF MYSORE,
GENERAL AND REVENUE DEPARTMENTS.

Sir,

With reference to the Proceedings of the Government order No 4823-24, dated J343
17th ult requesting me to lodge an appeal in the High Court against the order of acquittal passed by the City Magistrate of Bangalore in Criminal case No 340/1901/02 I have the honor to state that it is necessary to file an authenticated copy of the judgment of the Magistrate with the appeal petition. I therefore request that I may be favored

with a certified copy of the same
as the one now sent with the
Proceedings above quoted is a
private one.

I have the honour to be
Sir
Your most obedient Servt
S Rawlinson
Government Agent

Draft letter

SECTION P & J
FILE No. 18—01
SER V No 4—20

The Inspector Gl
of Prisons in
Mysore

dated 15th of the
No 6258
1531

Govt order no 4823-24
J.343
dated 17th September 1901
directing the Govt Advocate
to lodge an appeal in
the High Court against
the order of acquittal
of the accused Sheik
Imam passed by
the City Magistrate
of Bangalore in Br C
Case No 348 of 1901-1902
on the file of this Court

Referring to the
above, I have the honour
to request that the Insp Gl
of Prisons may be so good
as to obtain and
forward

forward to this Office at an early date, an authenticated Copy of the City Magistrate's Judgment in the above case, as the Govt Advocate states that he requires it in order to file it with the appeal petition to be presented to the Chief Court, the one already sent being a private Copy

By order

For Secretary
15/7/01

10

5505

30-X-01-189.

SECTION P & J

FILE No. 18-01

SERIAL No. 5

From Lt-Col J. Smyth M.S.S.Staff
The Inspector General of Prisons
in Mysore.

To H. V. Nanjundiah Esq. B.A. B.L.
The Secretary to the Govt. of Mysore.
General & Revenue Department
Bangalore

Dated 28th October 01.

Despatched

Received

General No. 1473
No.

Enclosure. No. One

Forwards an authenticated copy of Ag- Magistrate's Judgment in Case No 34 of 1901-1902 regarding the acquittal of Jail Warder Shaik Emamsa

30-X-01

With reference to the above draft letter for approval

Central Jail Press, Bangalore.—2-3-99.—302.

11

From.

Lieutt. Col. J. Smyth. M. D. I. M. S.
Offg: Inspector General of Prisons in Mysore

To. H. V. Ranjendiah Esqr. M. A. M. L.
Secretary to the Government of Mysore
General and Revenue Department

No. 1473-J

Dated 28th October 1901

Sir,

With reference to your Office docket no. 6258/5534 dated 16th Instant, requesting to obtain and forward to your Office at an early date an authenticated Copy of Judgment in Case no. 34 of 1901-1902 on the file of the City Magistrate, regarding the acquittal of Jail Warder Shaik Emam with a view to file the same with the appeal petition to be presented to the Chief Court, I have the honor to forward herewith an authenticated Copy of Judgment requested in the above.

I have the honor to be
Sir,

Your. Most Obedient Servant

D. Nicholson
Personal Assistant
For Offg. Inspector General of Prisons.

Draft for approval

SECTION 184
FILE No. 18-017
SERIAL No. 6

The Government
Advocate
in Kisumu

Dated 2nd November 1901

No 7061 Encl.
5574

The Government Advocate's letter No 52 dated 9th October 1901.

Has the honour to forward herewith as requested in the above, an authenticated copy of the judgment passed by the late Kisumu Magistrate & Bungoma in Criminal Case No 34 of 1901-1902, on the file of his

c/ Court.
13

By Order

P.V.
31/10/01

For Secretary

SECTION P & J
FILE No. 18 01
7

OFFICE OF THE
10202
5 - FEB
1216
CORE

From The Govt. Advocate Mysore

To Bangalore

THE SECY. TO THE GOVT. OF MYSORE,
GEN. & REV. DEPTS.

Dated 1/2/02

Despatched

Received

General No. 104
No.

Enclosure No. 3

Forwarding for information a copy of the Judgment passed in Crl. Case No 180 of 1901-2 by the Chief Court: Govt: of Mysore Vs Shaik Imam Jan

References to be marked.

3 Misc Pr
32
Cl. C.

Pet 1/2/02

Submitted.
This may be filed
Record, so that the Govt
Pet 2/2/02 Drafted Pleader may know that no appeal has been preferred

Enc 3 to 17

15

Office of the Govt Advocate in Mysore

Bangalore 1st February 1902

No. 1041

Encl 3.

From

The Government Advocate in Mysore

To

The Secretary to the Government of Mysore Revenue Govt Depttt

Sir,

With reference to the Proceedings of the Government Order No. 4823-24 dated the 17th September F. 343 1901 I have the honor to forward for information a copy of the judgment passed in Criminal Appeal No. 180 of 1901/02 by the Chief Court of Mysore in Shankaranna

The enclosures of the Proceedings quoted in the above

16

above-mentioned returned -

S Ramaswami
Government Accounts

In the Chief Court of Mysore at Bangalore

Monday the 20th day of January 1902

Present

Mr. Justice T. Narahari Rao, Judge

and

Mr. Justice A Rungasawmi Iyengar offg. Judge

Criminal appeal No. 180 of 1901-1902

Government of Mysore (Appellant) Complt.

By Mr. S. Ramaswami Iyer

Government Advocate.

Vs.

Shaik Imam Respondant (Accused)

Appeal against the order of acquittal passed by the City Magistrate of Bangalore in Criminal Case No. 34 of 1901-1902

This appeal coming on for hearing on Friday the 17th day of January 1902 the Court delivered the following

Judgment

This is an appeal by Government against the order of acquittal by the

City Magistrate of Sheik Imaam, a warder in the Central Jail, who was charged with an offence under Section 223 of the Indian Penal Code.

That five Convicts including Ramaswamy were given to the Charge of the warder for extra-mural work in the maternity Hospital according to the Chit Exhibit A is found by the Magistrate. It is admitted that the Convict Ramaswamy escaped from the Hospital premises.

According to the Jail Rules (See Sections 341 & 72) it is the duty of the warder to whose charge prisoners are entrusted for extra-mural work, not to hand over or to transfer any of the pritoners from his charge even to another warder much less to one not a warder and to bring them back to the jail. Every warder on being employed as such is required to be explained the jail rules bearing

On

on his duty and is given a copy of the rules. The accused has been warder for about two years and he does not allege the rules were not explained to him and a copy was not given to him.

It was the duty of the warder Sheik Imam to have the prisoners entrusted to his charge under his view at work and not to have transferred charge of Convict Ramaswamy to a gardener in the Hospital as he has done. The act of the accused in having against the Jail rules transferred charge of Ramaswamy to the gardener and lost sight of him must be held at least as an act of negligence which caused the escape of the Convict.

The accused Sheik Imam is therefore guilty of the offence of having negligently suffered Convict Ramaswamy to escape from Confine ment an offence punishable under

Section 223 of the Indian Penal Code

The order of acquittal is set aside.

The accused Sheik Imam is sentenced to pay a fine of ten rupees and in default to suffer simple imprisonment for one month.

(Signed) S. Narahari Rao.
Judge.

(Signed) A. Ramaswamy Iyengar.
Officiating Judge.

Copy

S. Ramaswamy
Government Advocate

In the court of the city Magistrate
Bangalore

Dated 31 July 1901

Present Mr. G. Venkatanatha Aiyar

Civil case no 34 of 1901.

Govt of Mysore
Complainant

Vs

Shaik Imam
accused

The Jailor of the Central Jail
in a complaint against the accused for
suffered a convict
Ramasawmy no 3513 to escape from his
custody on the 26 June 1901 while working
in the Veterinary Hospital at Bangalore

Summons issued under Section 223 of the Cr P code

2. The prosecution

(1) Ayyayan Koote

(2) Ramasawmy

(3) Nagamma (1st Court witness)

(4) Edwin Tate

but given to the accused by the chief warder
as an authority for him to take a convict

The accused was charged as follows:-

That you on about the 26 day of June
1901 at Bangalore negligently suffered convict
Ramasawmy to escape from your custody and
thereby committed an offence punishable

Under Section 223 of the I.P. code and within my cognizance

4) The accused pleaded not guilty and stated that he took the 5 convicts to the latrine for work, that Kullappa took the convict Ramasamy to get work from him within the Bangalaw, but that he did not return the convict to him at 12 noon that day, that he reported this to Miss Ayachamma who sent for 2 constables that they searched for the missing man but that in vain and that he reported the matter to the jail authorities.

The following witnesses

(1) Veerappen

(2) Leehma and filed no Exhibits

5 The Prosecution examined two convicts Ayyankoote and Thumboosamy as their witnesses. From their statements it is seen that the accused who is a warder in the jail took their 3 other convicts including Ramasamy the escaped man to the maternity for work that when the accused was getting work done by the 5 convicts in the compound, Kullappa a [illegible] in the maternity, went to accused & asked him permission to take convict Ramasamy in to the Bangalaw to [illegible] there that the accused complied with Kullappa's request cautioning the latter to take good care of that convict that

accordingly Kullappa took that convict

with him but that the convict & Kullappa

did not make their ~~re~~ appearance at 12 noon

when the other convicts rested from their

work their noon meal - This is the case

for the prosecution the accused called 2 witnesses

to prove that Kullappa had taken that convict

but as they depose to give us more information than

the prosecution witnesses we need not consider

them now the most important point to be considered

in this case is whether the accused, complying

with Kullappas request amounts to a culpable

negligence ~~in~~ in allowing the case within

see 213 P.C. ~~I~~ to decide this point we have first

to see what duties the accused was to get the

convicts ~~to do~~ in the maternity compound.

Mr Tate examined as the 2 court witness

as the chief warder of the central jail & he

produced the chit ~~of~~ of which was given to

the accused as an authority for him to take the

convicts to the maternity - this chit has the

following written in pencil upon it maternity

date 5 members & the name of the accused -

Mr Tate admits that this chit does not contain

the details of the work & that the maternity people

were to point out to the accused the nature of the

work the convicts were to do there - Thus we see

that the accused was sent there without any

knowledge of the specific work & that he was

at the mercy of the maternity people so for

as the nature of the work was concerned -

Page 8

On the other hand the Chief had informed him fully of the particular work to be done. He could have flatly refused the orders of any of the maternity people when they asked him to get done any other work than the specified one. Instead of such a specification, The accused was expected to go to some of the maternity people & ask them to teach him what was to be done.

Hear the statement of Miss Ayacha Nma, the Head of the maternity examined as the 1st Court witness may be considered. She says that her conversation and guidance Kullappa was to give the directions; & She must share Khadamane important duties to attend to such as to their patients. Thus we see that the accused is sent out of the jail with as many as 5 convicts under clear instructions, but he was to learn them from a gardener there, & that he is taken to task when he simply alleged that gardener, who was his task master for the time being. This is, in my opinion, the fairest position that a poor servant can find himself in. Hence I find that there was no negligence on the part of the accused & therefore I find him not guilty of the offence under Sec 223 (2) of which I acquit him under Sec 248 Cr. P. Code.

Letter No. 239 dated 9th August 1901 from the Superintendent Central Jail Bangalore to the Inspector General of Prisons in Mysore Bangalore.

With reference to this office letter No. 1405 dated 28th June 1901 reporting on the escape of a prisoner by name Ramaswamy No. 3513 while working at the Maternity on the 26th June 1901 and the suspension of the warder by name Sheik Imam in whose charge he along with four others was committed I have the honour to report that the said warder was placed before the City Magistrate for trial under section 223 of the Indian Penal Code for having negligently suffered the convict to escape and has been acquitted by the said Magistrate under section 256 Criminal Procedure Code.

This is another instance amongst several that have lately occurred in which the warders have been so acquitted and it will further tend to weaken the discipline and the sense of responsibility amongst them in respect of the custody of the prisoners when committed to their charge. From the copy of judgment submitted herewith for your perusal it will be observed that the Magistrate finds the accused warder not guilty because it was alleged that the prisoner had been given over by the warder to the charge of a gardener by name Kullappa a servant of the Maternity and that the escape occured while he was in his charge. Even granting for the sake of argument that this allegation was true it should not be accepted as any good defence as it was wrong on the part of the accused to have parted with the prisoner and he was liable for the consequences of the escape not less than had the escape occurred from his direct charge. (Vide section 341 Mysore Jail Manual). This section was pointed out to the Magistrate but he evidently has not considered it in his finding. The argument of the Magistrate that the warder not having clear instructions from the jailor or the Chief warder what work he was to get don at the Maternity was compelled to get orders from the gardener and should not be "taken to task" for parting with a prisoner under the directions of that gardaner is to say the least of it

very extraordinary. When prisoners are sent out to work in a place they have to do such work as may be pointed out to them by the Maistry or overseer in charge of the place, but the warders are not required to part with the prisoners and the accused knew full well about this he having been in the service for over 2 years.

I submit it is necessary that the City Magistrate's order of acquittal should be appealed against otherwise it will establish a bad precedent. I therefore suggest that Government may be addressed with a view to direct the Government Advocate to file an appeal in the Chief Court against the order.

" Copy "

For Secretary.

V.M.R.

SECTION P.J.

FILE No. 18-01

SERIAL No. 8

Rec'd:—

Letter No. 104 dated 1st February 1902, from the Government Advocate in Mysore, submitting with reference to Govt Order No. 4823-29 dated the 17th September 1901, a copy of the judgment passed in Criminal Appeal No. 343 by the Chief Court of Mysore in criminal appeal No. 18 of 1901-02 sentencing the accused Sheik Imam to pay a fine of Rs 10 and in default to suffer simple imprisonment for one month.

Order thereon:—

No. J 1119 1897-98-91 Dt 12-2-02 Recorded

12/2/02

Secretary

To. The Govt Advocate
The Inspector General of Prisons